

SURVEY OF RECENT DECISIONS
OF
THE HONORABLE PAUL J. KILBURG

**U.S. Bankruptcy Court
Northern District of Iowa**

October 1, 1998 - October 25, 1999

Prepared by

**Amy M. Kilpatrick
Law Clerk**

TABLE OF CONTENTS

The case summaries are categorized to correlate with the Key Number Classification of West's Bankruptcy Digest. West's key numbers are included in the topic headings below. Summaries of Prior Decisions (April 23, 1993 to October 25, 1999) are available on our web site, www.ianb.uscourts.gov.

I.	IN GENERAL, 2001-2120	
	A. In General, 2001-2010	
	B. Constitutional and Statutory Provisions, 2011-2040	1
	C. Jurisdiction, 2041-2080	
	D. Venue; Personal Jurisdiction, 2081-2100	
	E. Reference, 2101-2120	
II.	COURTS; PROCEEDINGS IN GENERAL, 2121-2200	
	A. In General, 2121-2150	
	B. Actions and Proceedings in General, 2151-2180	1
	C. Costs and Fees, 2181-2200	
III.	THE CASE, 2201-2360	
	A. In General, 2201-2220	
	B. Debtors, 2221-2250	
	C. Voluntary Cases, 2251-2280	1
	D. Involuntary Cases, 2281-2310	
	E. Joint Cases, 2311-2320	
	F. Schedules and Statement of Affairs, 2321-2330	
	G. Conversion, 2331-2340	
	H. Cases Ancillary to Foreign Proceedings, 2341-2360	
IV.	EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490	
	A. In General, 2361-2390	
	B. Automatic Stay, 2391-2420	2
	C. Relief from Stay, 2421-2460	
	D. Enforcement of Injunction or Stay, 2461-2480	
	E. Protection of Utility Service, 2481-2490	
V.	THE ESTATE, 2491-2760	
	A. In General, 2491-2510	
	B. Title and Rights of Trustee or Debtor in Possession, in General, 2511-2530	
	C. Property of Estate in General, 2531-2570	2
	D. Liens and Transfers; Avoidability, 2571-2600	3
	E. Preferences, 2601-2640	4
	F. Fraudulent Transfers, 2641-2670	4
	G. Set-off, 2671-2700	4
	H. Avoidance Rights, 2701-2740	
	I. Reclamation, 2741-2760	
VI.	EXEMPTIONS, 2761-2820	4

VII.	CLAIMS, 2821-3000	
	A. In General, 2821-2850	
	B. Secured Claims, 2851-2870	5
	C. Administrative Claims, 2871-2890	5
	D. Proof; Filing, 2891-2920	6
	E. Determination, 2921-2950	
	F. Priorities, 2951-3000	
VIII.	TRUSTEES, 3001-3020	
IX.	ADMINISTRATION, 3021-3250	
	A. In General, 3021-3060	
	B. Possession, Use, Sale, or Lease of Assets, 3061-3100	
	C. Debtor's Contracts and Leases, 3101-3130	6
	D. Abandonment, 3131-3150	
	E. Compensation of Officers and Others, 3151-3250	6
X.	DISCHARGE, 3251-3440	
	A. In General, 3251-3270	7
	B. Dischargeable Debtors, 3271-3340	
	C. Debts and Liabilities Discharged, 3341-3410	7
	D. Effect of Discharge, 3411-3440	
XI.	LIQUIDATION, DISTRIBUTION, AND CLOSING, 3441-3460	9
XII.	BROKER LIQUIDATION, 3461-3480	
XIII.	ADJUSTMENT OF DEBTS OF A MUNICIPALITY, 3481-3500	
XIV.	REORGANIZATION, 3501-3660	
	A. In General, 3501-3530	
	B. The Plan, 3531-3590	
	C. Conversion or Dismissal, 3591-3620	
	D. Administration, 3621-3650	
	E. Railroad Reorganization, 3651-3660	
XV.	ARRANGEMENTS, 3661.100-3661.999	
	A. In General, 3661.100-3661.110	
	B. Real Property Arrangements, 3661.111-3661.999	
XVI.	COMPOSITIONS, 3662.100-3670	
XVII.	ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700	
	A. In General, 3671-3680	
	B. The Plan, 3681-3700	
XVIII.	INDIVIDUAL DEBT ADJUSTMENT, 3701-3740	9
XIX.	REVIEW, 3741-3860	
	A. In General, 3741-3760	
	B. Review of Bankruptcy Court, 3761-3810	
	C. Review of Appellate Panel, 3811-3830	
	D. Review of District Court, 3831-3860	
XX.	OFFENSES, 3861-3863	

I. IN GENERAL, 2001-2120

B. Constitutional and Statutory Provisions, 2011-2040

Folz v. Educational Credit Management Corp.

11 U.S.C. § 523(a)(8)

In re Kenneth and Isabelle Folz

§ 1328(a)(2)

No. L91-00946-C, Adv. 99-9020-C, Ch. 7, 8/27/99

Debtor reopened his 1991 case to determine if a student loan is discharged. HELD: Dischargeability is determined by the law in effect on the date the petition is filed. In 1991, student loans were excepted from discharge in Chapter 13. A sunset provision which was repealed has no effect on the case. Counsel has a duty to fully inform the Court on applicable law, such as the repeal of the sunset provision.

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

B. Actions and Proceedings in General, 2151-2180

KBHS Broadcasting Co. v. Sanders (In re John Bozeman)

Fed. R. Civ. P. 15(c)

226 B.R. 627 (B.A.P. 8th Cir. 1998), Ch. 7, 11/20/98

Fed. R. Bankr. P. 4004, 4007

Creditors filed untimely motions to amend adversary complaints which were transferred from district court. HELD: Amended pleadings may relate back to original pleadings where the claims asserted arise out of the same conduct and there is no unfair surprise or prejudice. Creditors' amendments raise new issues and facts not alleged in the original complaints. Cover sheets and collateral motions which timely list the new claims are not pleadings and do not allow untimely amended complaints to relate back.

III. THE CASE, 2201-2360

C. Voluntary Cases, 2251-2280

In re Michael Long

11 U.S.C. § 707(a)

No. 99-01561-C, Ch. 7, 9/27/99

§ 707(b)

U.S. Trustee seeks dismissal for abuse of the bankruptcy process. Most of Debtor's unsecured claims arise from dishonored checks. HELD: Relief from the consequences of a failed plan to use bad checks to finance living expenses is outside the relief contemplated by the Code. The Court also finds substantial abuse under § 707(b) in Debtor's attempt to seek refuge under the Code from the consequences of writing bad checks. Case is dismissed with 180 day bar to refile.

In re Kristen Sue Dange
No. 98-03694-W, Ch. 7, 4/9/99

11 U.S.C. § 707(a)
Fed. R. Bankr. P. 1017

Debtor seeks voluntary dismissal. A debt on a mobile home has now been satisfied after relief from the stay was granted. Debtor's parents have forgiven their loan to Debtor. Debtor has paid the only two other creditors in full by paying a total of \$100. HELD: Debtor does not have an automatic right to dismissal. She must show cause for dismissal. No creditors will be prejudiced and all scheduled debts have been satisfied. No practical purpose would be served in denying dismissal.

In re James and Nancy Hogan
No. 99-00047-D, Ch. 7, 3/11/99

11 U.S.C. § 707(b)

U.S. Trustee seeks dismissal for substantial abuse, asserting Debtors could fund a Chapter 13 Plan. Debtors assert their financial condition and medical problems will not allow a feasible Chapter 13 plan. HELD: Debtors are paying on three vehicles, two of which they left in Arizona when they moved back to Iowa. They also pay storage charges for used furniture left in Arizona. A monthly medical expense of \$200 actually constitutes payment of prior unsecured debt. Redirecting the vehicle payments, storage charges and payments on prior medical debt could result in 60% payment to unsecured creditors in Chapter 13. The case will be dismissed unless Debtors elect to convert to Ch. 13.

IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490

B. Automatic Stay, 2391-2420

J.E. Adams Indus. v. NBD Equip. Finance, Inc.
In re J.E. Adams Indus.
No. 98-00167-C, Adv. 98-9295-C, Ch. 7, 5/13/99

11 U.S.C. § 362
§ 105

Debtor seeks to enjoin a State court action against its officers in which Creditor seeks to enforce their personal guarantees. HELD: Only a temporary injunction is appropriate in this matter. The automatic stay does not apply to the officers as personal guarantors. Debtor is not entitled to an injunction under § 105.

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

Huisinga v. Licup (In re Kathleen Licup)
No. 98-02385-C, Adv. 98-9313-C, Ch. 7, 9/22/99

11 U.S.C. § 541(a)(1)
§ 544(b)

Trustee requests summary judgment on his complaint to determine Debtor's interest in Arizona real estate, to sell the real estate and to avoid fraudulent transfers. HELD: Arizona property law applies to determine Debtor's interest in the real estate. Issues of fact exist regarding the intent of the grantors and whether a confidential relationship exists which are relevant to determining Debtor's property interests. Issues of fact regarding transfers between Debtor and Defendant, her father, also preclude summary judgment on the fraudulent transfer claim.

In re National Cattle Congress, Inc.
No. 97-03581-W, Ch. 11, 5/13/99
appeal dismissed, B.A.P. 8th Cir. 6/17/99

Iowa Code § 99.12

Iowa Greyhound Assoc. claims it is entitled to proceeds in an account Debtor created at the request of the Racing Commission while awaiting approval of a live racing permit. The Commission denied the permit. HELD: Only Debtor has rights to the fund. The record fails to designate rights in the fund in the event no live racing was held. Debtor is entitled to summary judgment on its objection to IGA's proof of claim.

D. Liens & Transfers; Avoidability, 2571-2600

United States v. Lincoln Savings Bank
In re Commercial Millwright Serv. Corp.
No. 96-60007-W, Adv. 96-6068-W, Ch. 7, 3/22/99
(appealed)

Iowa Code § 554.9402

The issue is whether a continuation statement combined with a now ineffective financing statement perfects a postconfirmation security interest. HELD: The Bank has a valid postconfirmation security interest. Debtor's Chapter 11 plan constituted a change in corporate structure or identity which caused the Bank's prepetition UCC filings to be seriously misleading. After confirmation, a new financing statement was required to perfect the Bank's new, postconfirmation security interest in the property of the reorganized Debtor. The continuation statement combined with the prepetition financing statement were seriously misleading and ineffective to perfect the Bank's postconfirmation security interest.

E. Preferences, 2601-2640

Dunbar v. Denton et al (In re Robbins W. Fischer)
No. 96-61088-W, Adv. 98-9132-W, Ch. 7, 11/4/98

11 U.S.C. § 546
Fed R. Bankr. P. 9019(a)

Creditor objects to Trustee's agreement to settle preference action. HELD: The Court approves settlement if it is in the best interests of the estate as a whole. Defendants have a facially valid limitations defense which has significant impact on the probability of success of the action. All parties will have difficulties proving the merits of their respective positions. Settlement should be approved.

F. Fraudulent Transfers, 2641-2670

Hanrahan v. Vogel (In re Michael and Marsha Vogel)
No. 98-02634-C, Adv. 98-9312-C, Ch. 7, 5/21/99

Iowa Code § 627.6
11 U.S.C. § 547(b)
§ 548(a)

Trustee objects to Mrs. Vogel's exemption of a one-half interest in a motorcycle. She also seeks to avoid as a preferential or fraudulent transfer the retitling of the bike in both Debtors' names. HELD: Mrs. Vogel may exempt her interest in the bike to the extent provable, i.e. \$1,678. Retitling the bike acknowledged Mrs. Vogel's ownership interest and is not an avoidable transfer.

G. Set-off, 2671-2700

In re David William Malek
No. 95-60479-W, Ch. 13, 7/20/99

11 U.S.C. § 553(a)

Creditor, a farm cooperative, set off patronage dividends against Debtor's account postpetition. Debtor seeks turnover of the dividends to Trustee to make plan payments. HELD: For setoff, both the debt of the creditor and its claim against debtor must arise prepetition. Although the dividends accrued prepetition, they were not paid until postpetition. They are property of the estate and should be turned over to Trustee.

VI. EXEMPTIONS, 2761-2820

In re Kim and Laura Schlitter
No. 98-02982-C, Ch. 7, 3/22/99

Iowa Code § 627.6(8)(e)

Trustee objects to exemption of a Deferred Compensation Plan. Debtor may receive payout from this employee-funded plan for unforeseeable emergencies. HELD: The plan is exempt. It is related to Debtor's

employment and intended to provide retirement income to participating employees. Debtor's access to payment is strictly limited.

In re Carl M. Witt, Jr.

Iowa Code § 627.6(10)

No. 98-03345-C, Ch. 7, 3/4/99

Trustee objects to exemption of a semi tractor as a tool of the trade. HELD: The Iowa Code does not allow Debtor to claim the semi exempt as a tool of the trade. Although farmers are treated differently under the Code, there is no constitutional violation.

VII. CLAIMS, 2821-3000

B. Secured Claims, 2851-2870

In re J.E. Adams Indus., Inc.

11 U.S.C. § 365(a)

No. 98-00167-C, Ch. 7, 5/27/99

§ 506

The issue is whether equipment leases are true leases or disguised security agreements. HELD: Two of the leases are true leases as the option price is more than 50% of the projected fair market value. Two other leases gave Debtor an option to own the equipment for a nominal consideration. These leases create security interests.

C. Administrative Claims, 2871-2890

In re David Arlo Wirkler

11 U.S.C. § 503(b)(1)

No. 98-02886-D, Ch. 13, 4/19/99

§ 507(b)

Bank seeks administrative expense claim for Debtor's use of collateral postpetition. Debtor used the Bank's collateral equipment during the harvest season. HELD: The use of the collateral benefitted the estate. Bank did not seek adequate protection for postpetition use of its collateral; it considered Debtor's original proposed plan adequately protected it. Debtor subsequently amended his plan treating Bank less favorably. In the absence of an order granting adequate protection, the Bank is not entitled to an administrative expense claim.

First Nat'l Bank v. Wedemeier, et al

11 U.S.C. § 545

In re Kevin and Kenda Wedemeier

§ 365(d)(3)

No. 98-01705-W, Adv. 98-9166-W, Ch. 7, 3/4/99

§ 503(b)(1)

aff'd in part, rev'd in part, remanded, ___ B.R. ___, 1999 WL 782596

(B.A.P. 8th Cir. Oct. 4, 1999)

appeal filed, 8th Cir. 10/15/99

Farm landlords seek payment of rent and assert liens on the crops. Trustee seeks to avoid landlords' liens. HELD: Trustee may avoid statutory and unperfected, contractual liens of landlords and preserve priority of the liens over junior interests. Landlords are entitled to administrative claims for the use of their farmland during the case. The Court uses the per diem rate based on the total lease payments dividend by 365 days.

D. Proof; Filing, 2891-2920

In re Strayer Seed Farms, Inc.

11 U.S.C. § 501

No. 95-62081-KW, Ch. 7, 5/26/99

Creditor objects to disallowance of its tardily-filed claim. HELD: Creditor's previous correspondence with Trustee, in writing, constituted an informal proof of claim, which may be amended by a formal proof of claim.

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

C. Debtor's Contracts and Leases, 3101-3130

In re Midwest Communications, Inc.

11 U.S.C. § 365

No. 98-03559-D, Ch. 11, 1/28/99

Bank wishes to terminate agreement to process Debtor's electronic and credit card transactions unless Debtor provides adequate protection of Bank's liability for charge backs. HELD: This is not a "financial accommodation" contract. Debtor's offer to build up a fund as adequate assurance of future performance is approved. Bank is not exposed to unreasonable risk and no cause exists to modify automatic stay.

E. Compensation of Officers and Others, 3151-3250

In re Cedar Rapids Meats, Inc.

11 U.S.C. § 326(a)

No. L90-00445-C, Ch. 7, 6/17/99

§ 330(a)

appeal filed, N.D. Iowa 6/28/99

Fed. R. Bankr. P. 2016(a)

U.S. Trustee challenges amount of Trustee fees sought. Trustee documented 667 hours of time spent on the case although he testified he spent more than 1,000 hours. His hourly rate as an attorney is between \$95 and \$125. He requests fees based on a percentage of the total assets distributed, rather than on his hourly rate. HELD: Trustee is entitled to reasonable compensation under § 330(a). The maximum compensation for trustees is the percentage rate based on § 326(a). The Court must apply the lodestar analysis. Trustee is required to keep accurate time records. The Court will allow Trustee fees based on a

total of 656 hours at the Trustee's applicable hourly rate. No fee enhancement is warranted. Amounts received by Trustee in excess of compensation finally approved must be returned to the estate.

X. DISCHARGE, 3251-3440

A. In General, 3251-3270

Nunemaker v. Flickinger (In re Douglas Flickinger)
No. 98-02247-C, Adv. 98-9274-C, Ch. 7, 10/20/99

11 U.S.C. § 523(a)(2)(A)
§ 727(a)

Plaintiffs loaned Debtor money to operate a bar for which Debtor formed a corporation. They assert the debt should be excepted from discharge for fraud. Plaintiffs also request denial of discharge for Debtor's unexplained transfer of the bar's assets. HELD: Plaintiffs failed to carry their burden of proof that Debtor fraudulently transferred his own property, presented deficient financial records or failed to explain loss of assets. Further, they failed to identify any fraudulent statement which they relied on in granting Debtor the loan.

C. Debts and Liabilities Discharged, 3341-3410

Nissen v. Meinders (In re Troy Meinders)
No. 99-01226-C, Adv. 99-9140-C, Ch. 7, 10/22/99

Fed. R. Bankr. P. 4007(c)
9006(b)(1)

Debtor seeks dismissal of dischargeability complaint filed after deadline. HELD: The Court has no discretion to enlarge time for filing complaint if the request is made after the filing deadline. The "excusable neglect" standard does not apply to the deadline for filing dischargeability complaints.

Hall v. Hall (In re Suzanne Louise Hall)
No. 95-60479-W, Adv. 98-9125-W, Ch. 7, 9/16/99

11 U.S.C. § 523(a)(15)

In the parties' dissolution decree, Plaintiff received an award of \$36,500 and Debtor received the couple's business. Plaintiff asserts the debt is nondischargeable. HELD: Debtor has failed to prove an inability to pay. Also, the totality of the circumstances does not demonstrate that the burden on Debtor in paying the debt is greater than the burden on Plaintiff if the debt was discharged. The property settlement obligation is excepted from discharge.

McDole v. Arensdorf (In re Deborah J. Arensdorf)
No. 99-00003-D, Adv. 99-9038-D, Ch. 7, 6/21/99

11 U.S.C. § 523(a)(2)(A)

Plaintiff asserts a state court judgment for actual and punitive damages is nondischargeable for fraud. The state court judgment, based on entry of a default, states Debtor's actions rise to the level of fraud,

deceitfulness and gross misconduct. Debtor did not participate in the case until after the judgment was entered, but the state court overruled her motion to set aside the default judgment. Plaintiff requests summary judgment based on issue preclusion. HELD: The record in the state court fails to reveal proof of two of the elements for nondischargeability, knowledge of Debtor and justifiable reliance by Plaintiff. No actual trial was held. The elements of issue preclusion are not met.

Davis v. Schlitter (In re James Roger Schlitter)
No. 98-00597-D, Adv. 98-9072-D, Ch. 7, 5/14/99

11 U.S.C. § 523(a)(2)
Iowa Code § 625.22

Creditors assert exception from discharge for fraud based on Debtor's insufficient funds check. HELD: Creditors established all five elements of their claim under § 523(a)(2)(A). Attorney fees may be included in the judgment pursuant to Iowa law regarding actions on dishonored checks.

Universal Bank v. Delaney (In re Richard J. Delaney)
No. 98-00692-D, Adv. 98-9098-D, Ch. 7, 3/31/99

11 U.S.C. § 523(a)(2)(A)

Debtor subsidized his gambling with credit cards and loans. He used promotional offers with lower interest rates to pay down debt with higher interest rates. He requested a transfer from Plaintiff to pay down another account. HELD: Debtor manipulated the credit card system and continued to gamble. He did not intend to repay Plaintiff when he requested the balance transfer. The history of Debtor's account activity with Plaintiff did not send up any red flags. By transferring balances, Debtor had created the impression that he had the ability and intent to repay. The debt is excepted from discharge.

Krein v. Hanagan (In re Mark and Esther Krein)
No. 97-01060-D, Adv. 98-9084-D, Ch. 7, 2/23/99
(published at 230 B.R. 379)

11 U.S.C. § 523(a)(5)
§ 523(a)(15)

Debtor seeks discharge of debt arising from his dissolution of marriage. Defendant asserts the debts are nondischargeable as being in the nature of support. In the dissolution settlement, Debtor assumed significant credit card debt. The parties also had a side agreement regarding other credit card accounts. HELD: Debtor owes his former spouse the obligations to pay joint creditors and hold Defendant harmless. The debts from both the dissolution settlement and the side agreement fall within § 523(a)(5). The debts are in the nature of support. Defendant's right to pursue Debtor for indemnity to the extent she is required to pay the credit card debt is excepted from discharge.

Iowa Oil Co. v. McGraw (In re Donald and Elaine McGraw)
No. 97-01428-W, Adv. 97-9177-W, Ch. 7, 12/3/98

11 U.S.C. § 523(a)(2)
§ 523(a)(4)
§ 523(a)(6)

Debtor gave Creditor insufficient funds checks for delivery of fuel. He subsequently requested a final delivery of fuel on credit. Creditor asserts its claim is nondischargeable for false representations,

conversion and embezzlement. HELD: Creditor failed to prove willfulness under § 523(a)(6) or implied false representation under § 523(a)(2). It has established the elements of embezzlement regarding the final delivery.

XI. LIQUIDATION, DISTRIBUTION, AND CLOSING, 3441-3460

In re Mary L. Hansen,

11 U.S.C. § 350(b)

No. 96-11108-C, Ch. 7, 2/3/99

Creditor/former landlord seeks to reopen case. He asserts Debtor filed an action against him which was property of her bankruptcy estate. He wishes to purchase this cause of action. HELD: The Chapter 7 Trustee was aware of the potential existence of the law suit. A Compromise, approved by the Court, transferred the estate's interest in the law suit to Debtor, including all claims asserted in Debtor's current action against Creditor. No grounds exist to reopen the case.

XII. BROKER LIQUIDATION, 3461-3480

XIII. ADJUSTMENT OF DEBTS OF A MUNICIPALITY, 3481-3500

XIV. REORGANIZATION, 3501-3660

XV. ARRANGEMENTS, 3661.100-3661.999

XVI. COMPOSITIONS, 3662.100-3670

XVII. ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700

XVIII. INDIVIDUAL DEBT ADJUSTMENT, 3701-3740

In re Sarah Bouma

11 U.S.C. § 523(a)(2)(A)

No. 99-00109-CH (Bankr. S.D. Iowa), Ch. 13, 8/18/99

Creditor wishes to file a late objection to confirmation. It objects to bifurcation of its claim which arises from a second mortgage on Debtor's residence. Creditor filed its objection after the bar date for objections but before the hearing date on Trustee's objection to confirmation. The Court confirmed Debtor's plan by Consent Order before the hearing date as Trustee's objection was resolved. HELD: The provisions of the confirmed plan are binding on Creditor. Its failure to timely object operates a waiver of its objection. The procedures used to notify creditors of the right to object to confirmation comport with due process. Creditor failed to prove its late objection was caused by excusable neglect.

In re Ronald and Phyllis O'Brien
No. 98-00545-C, Ch. 13, 5/4/99

11 U.S.C. § 1325(a)
§ 1322(b)
§ 1307

Creditors object to treatment of their secured claim and move to convert Debtors' case to Chapter 7. Debtors' plan proposes to pay the claim over 15 years with interest lower than the judgment rate of interest on the claim. HELD: Debtor must pay the present value of the claim over the life of the plan. The claim is not a long-term debt and must be paid within 5 years. Preconfirmation interest must be at the judgment rate. Cause exists to convert to Chapter 7.

In re Margaret Bails
No. 98-02717-C, Ch. 13, 11/30/98

11 U.S.C. § 1325(b)

Debtor includes a monthly gift to a friend in her Chapter 13 expense schedule. Trustee and U.S. Trustee objected. Debtor states she feels a moral and religious obligation to make the gift and asserts First Amendment rights. HELD: Debtor's monthly gift to a friend is not reasonably necessary for her support. The plan does not meet the disposable income test. Refusing to confirm the plan does not infringe on the First Amendment right to association.

In re Bernie B. Barker
No. 98-01601-C, Ch. 13, 11/16/98

11 U.S.C. § 1325
§ 1328
§ 524

Trustee and creditor object to confirmation of Chapter 13 plan based on feasibility, categorizing of unsecured debt and bad faith. The only creditor paid through the plan is the objecting creditor, Debtor's ex-wife. Debtor proposes to pay other creditors, including those discharged in previous Chapter 7 case, outside the plan. HELD: "Informally reaffirmed" debts were improperly included in Schedule J as monthly expenses. If the debts were previously discharged, Debtor is not liable for payment. Debts postdating the Chapter 7 case should be paid through the plan. Including these payments in Schedule J improperly reduces Debtor's reported disposable income. The circumstances indicate lack of good faith.

XIX. REVIEW, 3741-3860

XX. OFFENSES, 3861-3863